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VIA CM/ECF

October 4, 2019

Honorable John J. McConnell, Jr.
United States District Court
One Exchange Terrace
Providence, RI 02903

RE: John Doe v. Johnson & Wales University,
C.A. No. 18-106-JJM-LDA

Dear Judge McConnell:

Defendant Johnson & Wales University ("JWU") submits a supplemental legal authority in support of its motion for summary judgment, to be argued on the rescheduled hearing date of October 31, 2019. JWU attaches the dispositive ruling recently entered in *John Doe v. Vanderbilt University, et al.*, Civ. A. No. 3:18-cv-00569 (M.D. Tenn. Sept. 30, 2019), which granted the university's motion to dismiss the plaintiff's complaint. As matters of law, the court rejected Title IX erroneous outcome and contractual contentions substantially similar to those asserted by John Doe in this litigation. The court upheld a disciplinary process based upon Vanderbilt University's investigative findings that were made without a hearing, unlike JWU's process in this case, where JWU afforded John Doe a hearing—at which he was free to bring witnesses and submit evidence—after the investigation.

Title IX Erroneous Outcome

- The court rejected the plaintiff's argument, which John Doe asserts here, that gender discrimination can be inferred because most respondents are male. Relying on the First Circuit's ruling in *Doe v. Trustees of Boston College*, the court held that absent specific proof to the contrary, "[t]he gender of [] students accused of sexual assault is the result of what is reported to [the university], and not the other way around." P. 16 (quoting 892 F.3d 67, 92 (1st Cir. 2018)).

- The plaintiff also contended that "an acquittal of an accused male carries the threat that the Department of Education's Office for Civil Rights *could* institute an investigation that would result in the University's loss of federal funding." P. 18 (italics in opinion). John Doe makes a similar claim in his summary judgment

opposition, contending that JWU conducted its disciplinary process against the "backdrop" of Office for Civil Rights' Dear Colleague Letter dated April 4, 2011. The Tennessee federal district court held that such blanket contentions cannot support any reasonable inference of gender bias. Specifically, the court stated: "[I]t is not reasonable to infer that [a university] has a practice of railroading students accused of sexual misconduct simply to appease the Department of Education and preserve its federal funding." P. 18 (quoting *Doe v. Univ. of Cinn.*, 173 F. Supp. 3d 586, 602 (S.D. Ohio 2016)).

Breach of Contract and Implied Covenant Claims

- The plaintiff asserted several breaches of his contractual relationship with Vanderbilt concerning the university's investigation and disciplinary action under its policy, which the court rejected entirely. Pp. 24-34. As one of his claims, the plaintiff alleged that Vanderbilt failed to conduct an appropriate investigation (which John Doe similarly asserts against JWU here). The court held that Vanderbilt's policy contained no specific requirements as to how the investigative process must utilize, evaluate, and accept or reject testimony or evidence. *Id.* at p. 26. Instead, the university's policy "only requires that an investigation be conducted in the broadest sense." *Id.* Although the plaintiff disagreed with the process and result of the investigation, the court held that such disagreement alone could not support a breach of contract claim. *Id.* at pp. 27-28 (citing several cases including *Doe v. The Trustees of the Univ. of Pa.*, 270 F. Supp. 3d 799, 813 (E.D. Pa. 2017) (concluding that the promise of a "thorough and fair investigation" did not impose any additional requirements other than those specifically set forth in the student disciplinary process)).

- Much as here, the plaintiff complained: (1) that it was "absurd" to think he could defend himself and complained that, although an advisor was allowed, the advisor was not allowed to speak on behalf of the plaintiff; (2) that the university denied him the right to cross-examine any witnesses, including the complainant; and (3) that the evidence against him was insufficient. Pp. 28-33. The court rejected each claim, the first two claims because the applicable handbook did not provide for the rights the plaintiff claimed he should have been provided, and the last claim because it was not cognizable absent a procedural deviation, which the plaintiff had failed to identify. *Id.*

- The plaintiff also asserted a breach of Vanderbilt's "promise of fundamental fairness" in its policy and the implied covenant of good faith and fair dealing, which are similar to "fairness" claims asserted by John Doe here. Pp. 33-34. Rejecting the plaintiff's arguments, the court held that the duty of fairness "can be met by complying with the terms of the Handbook generally, and the disciplinary process in [Vanderbilt's sexual misconduct policy] specifically, that are designed to be fair." *Id.* at p. 34 (citing *ZJ v. Vanderbilt Univ.*, 355 F. Supp. 3d 646, 699

(M.D. Tenn. 2018). Namely, the plaintiff could only base his "fairness" claim upon the specific procedures stated in the policy and could not seek to impose requirements beyond its terms. *Id.* (citing *The Trustees of the Univ. of Pa.*, 270 F. Supp. 3d at 812) (finding generic promise of "fairness" does not give rise to "fairness" procedural obligations independent of specific provisions in university's disciplinary procedures, which themselves describe procedures designed to be fair).

JWU requests that the Court review this supplemental authority as part of its adjudication of the pending motion for summary judgment.

Sincerely,

Steven M. Richard

SMR/crp
cc: James Ehrhard, Esq.